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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,067	03/23/2000	Ronald O. Bubar	4645/31	1606

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INTELLECTUAL PROPERTY GROUP
FREDRIKSON & BYRON, P.A.
200 SOUTH SIXTH STREET
SUITE 4000
MINNEAPOLIS, MN 55402

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/535,067

Applicant(s)

BUBAR, RONALD O.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12,13,16-23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12,13,16-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claims 12-13, 16, 17-23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallin et al (4623542).

Wallin et al disclose a laminated crust comprising alternating substantially discrete layers of proofed dough and roll-in shortening. The dough comprises about 45-60% by weight flour, about 30-45% by weight water, .5-10% shortening and about 4-20% roll-in shortening. The laminated dough is docked. (see col. 7 lines 22-48, col. 11 lines 26-30 and 64-68, col. 10 lines 1-2)

Wallin et al do not disclose using margarine, having pizza topping on the laminated crust and baking the laminated dough.

It would have been obvious to one skilled in the art to use margarine instead of shortening because it is well known in the art to use shortening, butter or margarine alternatively. Butter and margarine are more expensive than shortening and give different taste and nutritional factor from shortening. It would have been obvious to one skilled in the art to select butter, margarine or shortening taking into consideration the above factors. As to applying pizza topping or forming a pizza, there is no identity standard to pizza because many types of topping are used to form pizza. For example, there are dessert pizza having fruit and cream. It would have been obvious to one skilled in the art to use a variety of filling to make different types of product. For example, it would have been obvious to use tomato and cheese filling if one wants to make a breakfast pizza. Such concept is well known in the art; for instance, there is breakfast burrito, breakfast taco etc.. There is also pizza pocket which has the same structure as the one disclosed by Wallin et al. While Wallin et al teach to fry the

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product, baking and frying are well known alternative cooking methods. Frying gives a better texture but has the drawn back of increasing the fat content. It would have been obvious to one skilled in the art to bake the product if one wants a healthier product having lower fat content. This alternative is known in the art; for example, there are potato chips that are fried and there are reduced-fat potato chip that are baked. The Wallin et al product also differs from the claimed product in the way it is made. However, determination of patentability in product-by-process claims is based on the product itself.

In the response filed 4/23/2004, applicant argues Wallin et al proof the dough after the shortening lamination step; applicant states proofing the dough before lamination gives distinct and unexpected structural advantage over the prior art. This argument is not persuasive. Whether the dough is proofed before lamination or after lamination, the final product comprises proofed dough layers. Applicant's claims are directed at the product, not the process of making it. Applicant argues, proofing before lamination gives unexpected result; however, applicant does not have any showing of the claimed product over the Wallin et al product. The declaration applicant makes reference to is not a comparison between the claimed product and the Wallin et al product. Applicant further argues the margarine, butter and shortening can not be used interchangeably and Wallin et al do not suggest using anything other than vegetable oil based shortening. The examiner respectfully disagrees with applicant. It is well known in baking to use shortening, butter and margarine interchangeably. The decision to use any of the well known fats is based on several factors. Butter and margarine give better

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taste and flavor but they are more expensive than shortening and are not as stable.

Shortening is cheaper and provides more shelf stability. Thus, the decision to use any of the well known fats would have been an obvious matter of reference depending on which factor one deems more important. As evidence that it is well known to substitute shortening with margarine or butter or vice versa, the examiner will submit papers which teach such substitution. For example, the Kitchen Tips teach to substitute shortening with margarine. The Crisco products teach that shortening can be substituted for butter or margarine. If shortening can be substituted for margarine or butter, it is obvious margarine can be used in place of shortening. While the Crisco paper does not have a date, the product has been around for a long time. The question of using shortening or butter or margarine is the one based on taste, texture and flavor versus expense and stability. The choice to be made is based on which factor is deemed more important. Applicant further argues that baking and frying as known cooking alternatives does not hold true for mass production food processors or recipe formulators. The basis of this argument is not clear. What mass production or recipe formulators does applicant refer to. Applicant argues baking gives unexpected result in terms of reducing bread qualities of the crust. This argument is not supported by factual evidence and there is no limitation with respect to texture in the claims. Applicant further argues the choice of frying or baking depends on many factors besides the healthfulness of the food. What applicant says is true, but it does not take away the fact that such alternative is well known and would have been obvious to one skilled in the art. Some foods taste better when they are fried, but that does not mean that they

can not be baked. Thus, the choice between baking and frying is one that is based on taste, flavor, texture versus the fat content, calorie content and healthfulness.

Applicant's arguments filed 4/23/04 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 11, 2004

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700